

SUPERIOR COURT OF WASHINGTON FOR KING COUNTY

EVA MADER, DANA RUSH, ROSS)	
DAY, and a class of similarly-situated)	NO. 98-2-30850-8 SEA
individuals,)	
)	
Plaintiffs,)	
)	
v.)	
)	
STATE OF WASHINGTON, STATE)	
BOARD FOR COMMUNITY AND)	
TECHNICAL COLLEGES, and)	
DEPARTMENT OF RETIREMENT)	
SYSTEMS,)	
)	
Defendants.)	

CLASS ACTION SETTLEMENT AGREEMENT

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I. INTRODUCTION AND SUMMARY OF PROCEEDINGS

1. This Settlement Agreement is made under Civil Rule 23(e) to settle the class action of *Mader v. State of Washington*, King Co. Cause No. 98-2-30850 SEA.

2. The Complaint in this case was filed in December 1998 by Named Plaintiffs Eva Mader and Dana Rush, on their behalf and on behalf of a class of similarly situated individuals. The Complaint was amended in April 1999 to add Ross Day as a Named Plaintiff. The Plaintiffs, part-time community and technical college instructors, claimed that they are and were eligible for State retirement benefits, but the State never provided certain retirement benefits for which they were eligible. The Plaintiffs sought declaratory relief, injunctive relief, benefits, damages, and attorney fees.

3. Since the filing of the *Mader* lawsuit, the State Board for Community and Technical Colleges has revised its regulation on eligibility for TIAA-CREF benefits so that eligibility is not determined by reference to the rules for the Teachers Retirement System.

4. In October 1999, the King County Superior Court (the "Court") certified the *Mader* lawsuit as a class action under Civil Rule 23(b)(1)(A) and (b)(2).

5. In December 1999, the Parties agreed to bifurcate the issues relating to liability and damages, with the issues relating to liability to be determined first.

6. In January 2000, the Court granted Plaintiffs' motion for partial summary judgment on the method of calculating the number of days and hours worked by Class Members for the purpose of retirement benefits. The Court determined that Washington Administrative Code (WAC) Section 415-112-335 contained the method of calculating the days and hours worked by Class Members for the purpose of retirement benefits for the time from at least 1977 to the present.

1 7. In January 2000, the Court also granted Plaintiffs' motion for partial summary
2 judgment on the State's defenses relating to the grievance procedures contained in the Class
3 Members' collective bargaining agreements and it struck these defenses.

4 8. In February 2000, the State filed a motion asking the Court to reconsider or, in
5 the alternative, clarify its January 2000 orders granting Plaintiffs' motions for partial sum-
6 mary judgment. The Parties then filed cross-motions for summary judgment on the State's
7 liability. The Parties' motions were scheduled for hearing in July 2000.

8 9. Prior to the hearing date on the Parties' motions, the Parties agreed to stay the
9 litigation and enter into settlement discussions. The State subsequently provided Plaintiffs a
10 copy of a database containing, among other things, the percentage of full-time work and quar-
11 terly salary of every part-time community college instructor in the State back to 1987. The
12 Parties then conducted independent, but consistent, analyses of the data to estimate the risks
13 and potential liabilities of further proceedings.

14 10. The Parties recognize that to continue the *Mader* lawsuit would delay the reso-
15 lution of the litigation for a considerable time (likely some additional years, including possi-
16 ble appeals), would create additional burdens and costs for the Parties, and would present un-
17 certainties and risks for all Parties as to the ultimate outcome of the litigation. To avoid the
18 uncertainty, risks, delays, and burdens of further litigation, the Parties agreed to this Settle-
19 ment Agreement.

20 11. All provisions in the Settlement Agreement apply to the Class Members,
21 unless an exception is specifically stated. Just as class membership alone would not necessar-
22 ily result in relief for any Class Member if the litigation had proceeded to judgment, class
23 membership alone does not necessarily make relief available. Class Members are entitled to
24
25

1 relief only as specifically stated in this Settlement Agreement.

2 II. DEFINITIONS

3 The following general definitions apply in this Settlement Agreement.

4 12. "Class" means all individuals who are Class Members.

5 13. "Class Counsel" means the law firm of Bendich, Stobaugh & Strong, P.C, and
6 the firm's attorneys.

7 14. "Class Members" means:

8
9 All individuals who (A) worked for the State of Washington as a part-time
10 community college instructor during any time from October 1, 1977 through the pre-
11 sent *or* the individual worked for the State of Washington as a part-time technical col-
lege instructor during any time from September 1, 1991 through the present; *and* (B)
meet one of the following three requirements:

- 12 (1) the individual is or was enrolled in a Teachers Retirement System
13 (TRS) plan; or
14 (2) the individual worked 50% or more Full-Time Equivalency for at least
15 two quarters in an instructional year and was not enrolled in any re-
16 tirement plan; or
17 (3) the individual worked 50% or more Full-Time Equivalency for at least
18 two quarters in an instructional year and the individual is or was en-
rolled in the TIAA-CREF Plan and either (a) contributions were not
19 made at the commencement of the second quarter of 50% or more Full-
20 Time Equivalency or (b) while so enrolled, salaries at one or more col-
21 leges were not subject to TIAA-CREF Plan contributions.

22 15. "Dismissal Order" has the meaning ascribed to it in paragraph 37 of this Set-
23 tlement Agreement.

24 16. "Effective Date" has the meaning ascribed to it in paragraph 37 of this Settle-
25 ment Agreement.

17. "Full-Time Equivalency" or "FTE" is the percentage of full-time a part-time
instructor is deemed to work. A Class Member's FTE for the purpose of this Settlement

1 Agreement is the percentage contained in the State Board's Database.

2 18. "Average Gain" means the factors provided to the Parties by representatives of
3 TIAA-CREF, Inc., which represent the value on June 30, 2001, of \$1 remitted one-twelfth
4 monthly during a particular calendar year, based on the actual allocation of contributions to
5 TIAA-CREF made by participants in the Washington Community and Technical College sys-
6 tem retirement plan, using the actual returns of the TIAA and CREF accounts for each year or
7 period.
8

9 19. "Instructional Year" means the Summer through Spring Quarters. For exam-
10 ple, the 1990-91 Instructional Year begins with the 1990 Summer Quarter and ends with the
11 1991 Spring Quarter.

12 20. "Quarters" include the Summer, Fall, Winter, and Spring Quarters in an In-
13 structional Year.

14 21. "Named Plaintiffs" means Eva Mader, Dana Rush, and Ross Day.

15 22. "Parties" means the State and the Plaintiffs.

16 23. "Plaintiffs" means the Named Plaintiffs, the Class, and the Class Members.

17 24. "The State" means the State of Washington, the State Board for Community
18 and Technical Colleges, the community and technical colleges in the State of Washington, the
19 Department of Retirement Systems, and all of its other agencies and departments.
20

21 25. "The State Board" means the State of Washington's State Board for Commu-
22 nity and Technical Colleges.

23 26. "The State Board's Database" means, for purposes related to this Settlement
24 Agreement, information elements related to the employment of part-time faculty taken from
25 the Personnel Management Information System (PMIS). The State Board captures certain

1 payroll and personnel information from the two-year college system's Personnel Payroll
2 Management System (PPMS) for use in describing various aspects of college employment.
3 The State Board's Database includes, for each year and quarter beginning Fall Quarter 1987,
4 part-time faculty: names, social security numbers, college(s) of employment, salary, retire-
5 ment plan status, date of birth, and percentage of full-time (full-time equivalent).

6 27. "TRS" means the Teachers Retirement System.

7 28. "TIAA-CREF, Inc." means the company that administers the TIAA-CREF
8 Plan.

9 29. "TIAA-CREF Plan" is the retirement plan established for eligible employees
10 of the community and technical colleges of the State of Washington.
11

12 **III. GENERAL MATTERS**

13 **Legislative Funding.**

14 30. This Settlement Agreement was contingent upon and subject to funding by the
15 Washington State Legislature, as well as upon approval by the Court. The State has obtained
16 legislative approval for funding.

17 **Compromise of Disputed Claims.**

18 31. This Settlement Agreement is a compromise and is the product of serious and
19 extended negotiations. The State's entry into this Settlement Agreement is a result of com-
20 promise and does not constitute an admission of liability by the State. The compromise em-
21 bodied in this Settlement Agreement is intended to fully and finally resolve the claims of the
22 class members in this case.
23

24 **Claims Subject to this Settlement Agreement.**

25 32. This Settlement Agreement completely resolves and settles the Plaintiffs'

1 claims, relating to their exclusion from specific retirement related benefits which may have
2 arisen from October 1, 1977 to the present, as defined herein. The Plaintiffs claimed that the
3 State failed to correctly calculate the days and hours worked by part-time instructors for the
4 purpose of TIAA-CREF and TRS retirement benefits. Due to the State's alleged failure to
5 correctly calculate the days and hours worked by part-time instructors for the purpose of re-
6 tirement benefits, Plaintiffs maintained that the State never provided the Plaintiffs TIAA-
7 CREF Plan benefits for which they were eligible and the State misinformed the Plaintiffs as to
8 their rights to receive these retirement benefits. Due to the State's alleged failure to correctly
9 calculate the days and hours worked by part-time instructors for the purpose of retirement
10 benefits, the Plaintiffs further maintained that the State failed to correctly report and calculate
11 service of part-time instructors for TRS retirement plans. The Plaintiffs claimed that, because
12 of the State's alleged failure to correctly calculate the days and hours worked by part-time in-
13 structors for the purpose of retirement benefits, they were not provided retirement benefits,
14 were wrongfully denied wages in the form of retirement benefits, did not receive tax benefits
15 associated with the applicable retirement contributions, and the Plaintiffs never received the
16 gains which they would have otherwise earned on the applicable retirement contribution.
17 Plaintiffs also claimed that those who participated in TRS were not provided with the option
18 of transferring to TIAA/CREF. The State denies these allegations. All such claims described
19 above concerning the State's alleged failure to correctly determine eligibility of part-time in-
20 structors for retirement benefits and/or the administration of retirement plans, whether based
21 on a tort, contract, constitutional, or statutory, including Chapter 155, Laws of 2002, theory of
22 recovery that is asserted or could have been asserted in this litigation are covered herein.
23 Claims by Class Members against the State that are separate and independent from the spe-
24
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1 cific claims described in this paragraph are not settled or resolved in this Settlement Agree-
2 ment.

3 **Release of Claims Subject to the Settlement Agreement.**

4 33. Contingent upon final approval of this settlement by the Court and payment of
5 the cash amounts described herein, such amount to be provided by legislative appropriation,
6 Plaintiffs hereby completely release and forever discharge the State of Washington, the De-
7 partment of Retirement Systems, the State Board for Community and Technical Colleges, in-
8 cluding the State's officers, agents, attorneys, employees, agencies and departments, from any
9 and all demands, obligations, actions, causes of action, rights, damages, costs (including pay-
10 ment of attorneys' fees), expenses and compensation, that Plaintiffs asserted or could have
11 asserted in the Litigation relating to the claims described in the preceding paragraph.
12

13 34. Plaintiffs acknowledge and agree that the release and discharge set forth above
14 is a general release of the claims described above. The Parties have entered into this Agree-
15 ment as a compromise of disputed claims, and as a means of finally resolving all questions,
16 issues, duties, obligations, and responsibilities between them regarding those disputed claims.
17 Plaintiffs further agree that they have accepted payment of the sums and the other terms speci-
18 fied herein as a complete compromise of matters involving disputed issues of law and fact.
19 Plaintiffs assume the risk that the facts or law may be other than they believe. It is understood
20 and agreed by the Parties that this settlement is a compromise and nothing contained herein,
21 including the payments are to be construed or interpreted as an admission of liability on the
22 part of the State of Washington, by whom liability is expressly denied, or an admission as to
23 any issue in dispute or which could have been in dispute between the Parties.

24 **Timeliness.**

25 35. The Settlement Agreement includes certain commitments by the parties and

1 counsel to take actions. Any procedural failure or error, such as a failure to act in a timely
2 manner, does not preclude final approval and enforcement of the Settlement Agreement if the
3 error can be corrected or made harmless (*e.g.*, a failure to give adequate notice to class mem-
4 bers).

5 **Taxability of Settlement.**

6 36. The defendants take no position as to the taxability of any payments hereunder
7 or as to any taxes which may be owed by the Plaintiffs as a result of this settlement. Plaintiffs
8 agree that they are solely responsible for any tax payments which may be owed as a result of
9 this Settlement Agreement.

10 **Effective Date of Settlement Agreement.**

11 37. Following signature of the Parties' representatives, this Settlement Agreement
12 is effective on the date of an order by the King County Superior Court approving the Settle-
13 ment Agreement pursuant to Civil Rule 23(e) and dismissing the litigation with prejudice
14 ("Dismissal Order") in the form agreed to by Class Counsel and Defendants and approved by
15 the Court ("Effective Date"). In no event shall the effective date be sooner than twenty (20)
16 days after the effective date of an appropriation by the Washington State Legislature to one or
17 more agencies for the purposes of funding the settlement herein.

18 **Warranty of Capacity to Execute Agreement.**

19 38. The undersigned attorneys represent and warrant that they have the authority to
20 execute this Settlement Agreement on behalf of their respective clients.
21

22 **IV. SPECIFIC RELIEF**

23 **\$12 Million Cash Settlement.**

24 39. The State shall pay a total of \$12 million which, together with the other relief
25 provided in this Agreement, is in full and final settlement of this lawsuit.

1 **Payments to Named Plaintiffs.**

2 40. The Named Plaintiffs shall each receive \$33,333.33 incentive payments for
3 their participation as class representatives. This participation included, but was not limited to,
4 commencement of this lawsuit, discovery matters (including answering interrogatories and
5 request for documents), preparation of declarations, attendance at meetings, assisting Class
6 Counsel, and supporting the settlement.

7 41. The payments to the Named Plaintiffs described in paragraph 40 shall be dis-
8 bursed to the Named Plaintiffs within thirty-five (35) days of the Effective Date.

9 42. In addition to the payment described in paragraph 40, the Named Plaintiffs
10 shall receive, together with other Qualifying Class Members, their *pro rata* shares as de-
11 scribed in paragraphs 47 and 58.

12 **Payments to Qualifying Class Members.**

13 43. The State shall pay \$8.3 million in omitted retirement contributions and gains
14 in the TIAA-CREF Plan as described in paragraphs 47-58.

15 **TRS Members.**

16 44. Adjustments in TRS service will be made upon application as described in
17 paragraphs 59-60. TRS Members in Plans 2 or 3 who are Qualifying Class Members (see
18 paragraph 48) may instead elect to receive the TIAA-CREF contributions provided in this
19 Agreement, but in case of such election, TRS Members may lose any service credit for the
20 period for which omitted TIAA-CREF contributions and gains are being paid. See Part VI,
21 paragraphs 62-63, below.
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V. COMPENSATION FOR OMITTED CONTRIBUTIONS IN THE TIAA-CREF PLAN

Plaintiffs' Claims Relating to the TIAA-CREF Plan Arose in Fall Quarter 1990.

45. In February 1991, the State Board adopted a new eligibility rule for the TIAA-CREF Plan, retroactive to August 31, 1990. Under this eligibility rule, part-time community college and technical instructors were eligible to participate in the TIAA-CREF Plan if they would otherwise be eligible to participate in TRS. Plaintiffs claimed in the lawsuit that they were eligible for membership in TRS, and therefore eligible for the TIAA-CREF Plan, but the State erroneously did not enroll them in the TIAA-CREF plan.

46. The *pro rata* formula for Qualifying Class Members is based on their claims relating to TIAA-CREF. The *pro rata* formula is also based on the assumption that the earliest that the State would have started making contributions to the TIAA-CREF Plan on a Class Member's behalf was in the 1991 Winter Quarter, which is the second consecutive quarter after the new eligibility rule for the TIAA-CREF Plan took effect (August 31, 1990 or the 1990 Fall Quarter).

Pro Rata Omitted Contributions and Gains in the TIAA-CREF Plan to Qualifying Class Members.

47. A total of \$8.3 million, which represents omitted retirement contributions and gains in the TIAA-CREF Plan, shall be deposited *pro rata* to TIAA-CREF Plan retirement accounts for the benefit of Qualifying Class Members (defined at paragraph 48) based on a formula utilizing the Qualifying Class Member's particular years of service, the length of service, the FTE percentage set forth in the State Board's Database, and the "Average Gain" as defined in this Settlement Agreement.

1 **Criteria for Determining Class Members Who Qualify to Receive a *Pro Rata***
2 **Share of Omitted TIAA-CREF Plan Contributions and Gains.**

3 48. A Qualifying Class Member, for the purpose of receiving a *pro rata* contribu-
4 tion of omitted TIAA-CREF Plan contributions and gains, is an individual who meets the fol-
5 lowing requirements:

- 6 (a) the individual is a Class Member;
- 7 (b) the Class Member is not a retiree from a State or a Washington municipi-
8 pal retirement plan (other than the TIAA-CREF Plan);
- 9 (c) the individual worked at 50% or more FTE in two or more Quarters in
10 an instructional year for two or more consecutive instructional years. The 50% or more FTE
11 can be at a combination of two or more colleges;
- 12 (d) only Quarters a Class Member worked in or after the Fall Quarter of
13 1990 shall count because that is when the State Board amended the TIAA-CREF Plan and the
14 Plaintiffs claim they became eligible for the plan;
- 15 (e) the last Quarter that may be counted is the Spring Quarter of 2000 be-
16 cause the State Board began enrolling part-time 50% or more FTE faculty members during
17 the 1999-2000 Instructional Year;
- 18 (f) the only Quarters that count are those in which a Class Member's re-
19 tirement code in the State Board's database is: (1) blank, (2) contains the designation "NE,"
20 which means "not eligible," (3) or indicates the worker participated in TRS Plan 2, TRS
21 Plan 3, or TIAA-CREF (see paragraph 52 below);
- 22 (g) with respect to Quarters worked by participants in TRS Plans 2 or 3,
23 referenced in subparagraph (f) above, paragraph 62 contains the prerequisites to counting
24 Quarters for the purpose of receiving *pro rata* TIAA-CREF contributions.
25

1 49. Even though the Quarters worked at 50% or more FTE of Class Members
2 while in TIAA-CREF will count in determining whether Class Members are Qualifying Class
3 Members, Class Members will not receive any *pro rata* omitted contributions and gains for
4 their service when a college previously made TIAA-CREF Plan contributions on their behalf.
5 Instead, the purpose of including that time is to compensate Qualifying Class Members if they
6 worked at *additional* colleges that did *not* make TIAA-CREF Plan contributions on their be-
7 half.
8

9 50. Any time that Class Members worked and were members of TRS Plan 1 will
10 not count towards determining eligibility to receive *pro rata* omitted contributions and gains
11 in the TIAA-CREF Plan. Such Class Members are entitled to receive adjusted service credit
12 in TRS Plan 1, if appropriate, under the terms of this Agreement.

13 **Pro Rata Contribution Formula for Qualifying Class Members.**

14 51. The *pro rata* contribution formula for Qualifying Class Members is based on
15 the “Average Gain” for omitted contributions in the TIAA-CREF plan as calculated by TIAA-
16 CREF, Inc. for the period ending on June 30, 2001. The Average Gain is calculated based on
17 calendar years rather than Instructional Years. The Average Gain used in the formula is as
18 follows:
19

Calendar Yr.	Gain
1991	2.606738
1992	2.377812
1993	2.156493
1994	2.042786
1995	1.873327
1996	1.598688
1997	1.360376
1998	1.165665
1999	1.009538
2000	0.901614

1 52. A “Contributing Quarter” for the purpose of the *pro rata* contribution formula
2 is a quarter in an Instructional Year from Fall Quarter 1990 to Spring Quarter 2000 in which a
3 Qualifying Class Member worked two or more quarters at 50% or more FTE subject to the
4 following conditions:

5 (a) The quarter prior to the second quarter at 50% or more FTE in the first
6 Instructional Year that counts towards a Class Member becoming a Qualifying Class Member
7 is not a Contributing Quarter. For example, if a Class Member became a Qualifying Class
8 Member due to the following work history -- 1990 Fall Quarter 50% FTE, 1991 Winter Quar-
9 ter 50% FTE, 1991 Spring Quarter 50% FTE, 1991 Fall Quarter 50% FTE, 1992 Winter
10 Quarter 50%, 1992 Spring Quarter 33% FTE -- the 1990 Fall Quarter would not count as a
11 Contributing Quarter because that quarter is prior to the Class Member’s second quarter at
12 50% or more FTE in the first Instructional Year that counts toward the Class Member becom-
13 ing a Qualifying Class Member.
14

15 (b) If the State Board’s database establishes that a Qualifying Class Mem-
16 ber received TIAA-CREF Plan contributions from a particular college, the Qualifying Class
17 Member’s salary from that particular college is not counted as a Contributing Quarter. If the
18 same Qualifying Class Member did not receive TIAA-CREF Plan contributions from another
19 college, then the Qualifying Class Member’s salary from that other college is counted as a
20 Contributing Quarter. For example, if a Qualifying Class Member had the following work
21 history and “College 1” made TIAA-CREF contributions and “College 2” did not make
22 TIAA-CREF contributions -- 1991 Fall Quarter 50% FTE at College 1, 1991 Fall Quarter
23 33% FTE at College 2; 1992 Winter Quarter 50% FTE at College 1, 1992 Winter Quarter
24 33% FTE at College 2, 1992 Spring Quarter 50% FTE at College 1; 1992 Spring Quarter 33%
25

1 FTE at College 2 -- the Qualifying Class Member's work at College 2 would count as a Con-
2 tributing Quarter because no TIAA-CREF contributions were made by College 2 on behalf of
3 the Qualifying Class Member.

4 53. For each Qualifying Class Member, a percentage of their salary in each Con-
5 tributing Quarter will be multiplied by the Average Gain for that calendar year to determine
6 the Qualifying Class Member's Gain. The percentage of salary used for a Qualifying Class
7 Member in each Contributing Quarter is based on the Qualifying Class Member's age. The
8 percentage of salary for under age 35 is 5%; 35-49 is 7.5%, and 50 and over is 10%. For
9 those Qualifying Class Members whose age cannot be determined after reasonable efforts, the
10 contribution rate will be 8.1%, which is the average contribution rate for Washington State
11 TIAA-CREF participants. If a Qualifying Class Member's age changed during a Quarter so
12 that the percentage in the Contributing Quarter would be higher for that class member, the
13 formula will utilize the higher percentage for that Quarter.
14

15 54. The formula for calculating *pro rata* shares of Qualifying Class Members is as
16 follows:

17 The individual loss for each Qualifying Class Member, before the *pro rata* shares are
18 determined, shall be calculated on a calendar year basis as follows:

19 Salary Earned During Contributing Quarters in Calendar Year (paragraph 52)

20 X

21 Contribution Percentage Based on Age (paragraph 53)

22 X

23 Average Gain (paragraph 51)

24 =

25 Qualifying Class Member's Contribution and Gain for Calendar Year

1 55. After each Qualifying Class Member's Contribution and Gain for each calen-
2 dar year is calculated, the Aggregate Gain for all Qualifying Class Members shall be calcu-
3 lated by adding together all of the individual Qualifying Class Member's Contributions and
4 Gains for all calendar years.

5 56. The Aggregate Contribution and Gains for all Qualifying Class Members shall
6 then be divided into \$8.3 million to determine the *pro rata* share of omitted TIAA-CREF con-
7 tributions and gains for each Qualifying Class Member. For example, if the Aggregate Con-
8 tribution and Gain is calculated to equal \$11.8 million, the *pro rata* share of each Qualifying
9 Class Member will equal 70%:

$$\begin{array}{r} \$8.3 \text{ million (omitted TIAA-CREF contributions and gains, paragraph 47)} \\ \div \\ \$11.8 \text{ million (hypothetical Aggregate Contribution and Gain)} \\ = \\ 0.70 \text{ (hypothetical } \textit{pro rata} \text{ share)} \end{array}$$

14 57. After the *pro rata* share is calculated on an aggregate basis, each Qualifying
15 Class Member's Contributions and Gain for each Calendar Year will be multiplied by the *pro*
16 *rata* share to determine the amount of omitted TIAA-CREF contributions and gains that will
17 be deposited in a TIAA-CREF Plan account for the benefit of the Qualifying Class Member.
18 For example, if a Qualifying Class Member's Contribution and Gain for Calendar Year 1991
19 is calculated under paragraph 54 to equal \$3,000 and the *pro rata* share is 0.70 under this for-
20 mula, \$2,100 would be deposited in a TIAA-CREF Plan account (paragraphs 81-83) for the
21 benefit of the Qualifying Class Member:

\$3,000 (hypothetical Qualifying Class Member's Contribution and Gain
for 1991 calendar year)

X

.70 (hypothetical *pro rata* share, paragraph 56)

$$=$$

\$2,100 (hypothetical amount to deposit in TIAA-CREF Plan account
for benefit of Qualifying Class Member)

58. After the formula is applied and the Qualifying Class Members' "Contributions and Gains" are calculated in the aggregate, the \$8.3 million will be contributed on a *pro rata* basis to each Qualifying Class Member's TIAA-CREF Plan retirement account. The procedures for contributions are set forth at paragraphs 81-83.

VI. TRS MEMBERS

TRS Service Credit.

59. Plaintiffs' claims in this litigation relating to TRS extend back to October 1977. There are thus Class Members who are members of TRS whose service credit allegedly is understated because only their in-class teaching hours were counted toward service credit in TRS. Absent evidence of actual hours, the State shall adjust the service credit of these Class Members according to the method set forth in WAC 415-112-335, but only upon the Class Members' application to the Department of Retirement Systems (DRS). The Notice provided to Class Members shall inform the Class that the service credit of those Class Members in TRS may need adjustment and that, upon application, the State will make such adjustments in the future.

60. There are also Class Members who are members of TRS but who allegedly erroneously received no service credit for work since October 1977. These Class Members

1 have a right to now purchase additional service credit by paying the employee contribution
2 that they would have had to pay on the dates they worked plus interest at the rate for the par-
3 ticular TRS Plan at that time of the Class Members' service. The Notice provided to Class
4 Members shall inform the Class that the service credit of those Class Members in TRS may be
5 adjusted and they may apply for service credit in the future.

6 61. The foregoing two paragraphs regarding TRS service credit do not apply to
7 any quarter for which a Qualifying Class Member received a *pro rata* TIAA-CREF deposit.
8

9 **TRS Members' Option to Retroactively Enroll in TIAA-CREF.**

10 62. TRS Plans 2 and 3 Members who meet the eligibility criteria as Qualifying
11 Class Members in paragraph 48 above, but who were not offered an opportunity to participate
12 in TIAA-CREF during the period from Fall Quarter 1990 through Spring Quarter 2000, shall
13 be offered an opportunity to retroactively choose between (a) remaining in TRS Plans (and
14 potentially applying for a service credit adjustment, as stated in paragraph 59) and
15 (b) participating in the TIAA-CREF Plan. The opportunity to participate in TIAA-CREF
16 shall be effective on the Class Member's first Contributing Quarter. Each TRS Member who
17 elects and meets the requirements for this option shall receive a *pro rata* contribution under
18 the formula in paragraphs 51-58. For all purposes such TRS Members shall be treated as hav-
19 ing made a retroactively effective election to participate in TIAA-CREF as of the Class Mem-
20 ber's first Contributing Quarter and will thus forgo all TRS service credit from the beginning
21 of that Contributing Quarter under procedures of the Department of Retirement Systems and
22 shall be entitled to a refund or roll-over of their TRS Contributions.
23

24 63. The State shall determine which TRS Members are entitled to receive the op-
25 tion described in paragraph 62 and provide notice of this option to those Class Members

1 promptly after the Effective Date, with the goal of providing an adequate opportunity to make
2 a choice and determine each Class Member's approximate *pro rata* share prior to the date set
3 for payment of funds to TIAA-CREF (paragraph 81). The form of such notice of this option
4 and the procedures for making an election shall be determined by the parties and approved by
5 the Court. Class Counsel will not participate in advising TRS Members of the advantages or
6 disadvantages of the choices offered, but the Department of Retirement Systems may answer
7 questions concerning this matter, such as the amount of TRS service credit that would be
8 foregone.

9
10 **Class Counsel's Role Relating to Individual Class Member's Claims Relating to**
11 **TRS.**

12 64. The Parties established the foregoing procedures regarding Class Members'
13 claims relating to TRS. Class Counsel, however, have no obligation to represent any Class
14 Member with respect to any claim made under the terms of this Settlement Agreement.

15 **VII. ATTORNEY FEES**

16 65. The Washington Supreme Court determined the method of computing attorney
17 fees in class actions for public employee retirement benefits in *Bowles v. Department of Re-*
18 *tirement Systems*, 121 Wn.2d 52 (1993). The approach set forth in *Bowles* is applied here.

19 66. In accordance with the *Bowles* criteria, a reasonable attorney fee is \$3.6 mil-
20 lion based on the values conferred on Class Members as set forth in this Settlement Agree-
21 ment. The components include the \$8.3 million for past omitted contributions and gains in
22 the TIAA-CREF Plan for Qualifying Class Members, the incentive payments to Named Plain-
23 tiffs, the benefits that have already been obtained, and will be obtained in the future, by Class
24 Members due to the Court's interpretation of WAC 415-112-335 and due to the TRS adjust-
25 ments for Class Members. The value of the benefits received by Class Members in the TIAA-

1 CREF Plan from 1999 into the future and the TRS adjustments for Class Members has not
2 been exactly calculated, but is valued at millions of dollars. The \$3.6 million fee for Class
3 Counsel thus equals 30% of the settlement cash amount of \$12 million and is a significantly
4 smaller percentage of the total value of relief when future benefits are considered. The fee is
5 thus within the range of reasonableness as set forth in *Bowles, supra*.

6 67. Class Counsel's fee here is also reasonable because it is at or below the market
7 rate, Class Counsel worked on a contingency fee basis and assumed substantial risk in the rep-
8 resentation of the Plaintiffs, Class Counsel's efforts resulted in a significant clarification in
9 the law for present and future part-time instructors, and Class Counsel achieved excellent re-
10 sults for the Class.

11 68. The State shall pay Class Counsel the \$3.6 million fee within thirty-five (35)
12 days of the Effective Date.

13 69. The Parties agree, as soon as practicable after execution of this Settlement
14 Agreement, to jointly move the Court to:

15 (a) find preliminarily that this Settlement is a fair and reasonable compro-
16 mise of the Claims;

17 (b) order that notice of the Litigation and Settlement be provided to Class
18 Members;

19 (c) declare that the content of the proposed notice and the mechanisms of
20 communicating such notice meet the requirements of Civil Rule 23(e) with respect to all Class
21 Members;

22 (d) schedule a date, at least ten days prior to the settlement hearing, by
23 which any Class Member who objects to the terms of this Settlement Agreement may file
24
25

1 written objections to this Settlement Agreement with the Clerk of the Court, and serve such
2 objections on Class Counsel and Defendants; and

3 (e) schedule a settlement hearing date pursuant to Civil Rule 23(e) at
4 which any Class Member, who meets other requirements established by the Court, may ap-
5 pear in order to object to the fairness, adequacy, or reasonableness of this Settlement Agree-
6 ment or to any order or findings of the Court.

7 **VIII. SETTLEMENT ADMINISTRATION**

8 **Objections to Settlement.**

9
10 70. Unless the Court directs otherwise, all objections to the Settlement shall be
11 submitted in writing to the Court, Class Counsel, and Defendants in a manner and time pre-
12 scribed by the Court no less than 10 days in advance of the hearing on the settlement. Any
13 objections not so submitted shall be waived. Anyone wishing to appear at the settlement
14 hearing to object to the Settlement shall so specify in his or her written objections.

15 **Notice Provisions.**

16 71. Individual Notice. Class Members who can be identified through reasonable
17 effort shall be given notice of the Settlement in the form proposed by the parties, subject to
18 any modifications ordered by the Court. The notice shall summarize the major terms of the
19 Settlement Agreement, state the time, date and place of the settlement hearing, and explain the
20 procedures and deadlines for submitting written comments or objections. The State shall mail
21 the notice, at the State's expense, to the last known address of each Class Member whose
22 identity and address is reasonably ascertainable, or cause the notice to be delivered by campus
23 or college mail systems.

24
25 72. Other Notice. In addition to mailing individual notices, every State community

1 and technical college shall post the notice of the Settlement in common areas frequented by
2 faculty, as each college determines is reasonable. The notice shall also be posted on internet
3 sites of Class Counsel, the State Board for Community and Technical Colleges, and the De-
4 partment of Retirement Systems approximately one week after the Agreement is preliminarily
5 approved by the Court and the notice shall not be removed from those internet sites until the
6 Effective Date of the Settlement Agreement.

7
8 73. The State shall also provide a copy of the notice to the Washington Federation
9 of Teachers and the Washington Education Association, which collectively bargain on behalf
10 of the Class Members, approximately one week after the Settlement Agreement is preliminar-
11 ily approved by the Court.

12 74. Prior to the settlement hearing the State shall submit a certification to the Court
13 that it has complied with the notice requirements.

14 **Responsibility for Notice and Settlement Administration.**

15 75. The State, at its expense, shall be responsible for administering the settlement
16 and notice to Class Members. The State shall keep Class Counsel timely informed about the
17 notice process and the settlement administration process. At Class Counsel's request, the
18 State shall, upon reasonable notice, provide Class Counsel with information about the notice
19 and settlement administration.

20 **Information to be Utilized for Processing.**

21
22 76. The State Board's Database is based on the Class Members' payroll records
23 used in tax reporting. The data in the State Board's Database are normal business records and
24 the Database was created for routine business purposes other than this litigation. The State
25 Board's Database and the data contained therein thus have a presumption of accuracy. Plain-

1 tiffs have had the opportunity to test the State Board's Database and believe that the presump-
2 tion of accuracy is well-founded. The State shall have discretion to correct any clear errors
3 and fill in gaps in the State Board's Database prior to its deposit of \$8.3 million in omitted
4 contributions and gains to TIAA-CREF, Inc. for payment to TIAA-CREF Plan accounts for
5 the *pro rata* benefit of Qualifying Class Members, providing notice thereof to class counsel.

6 77. The State will rely and has the right to rely on the information in the State
7 Board's Database in administering the Settlement Agreement. Whether a Class Member is a
8 Qualifying Class Member entitled to a *pro rata* share of the \$8.3 million in omitted employer
9 contributions and gains in the TIAA-CREF Plan (paragraphs 48-50), and a Qualifying Class
10 Member's *pro rata* share, shall be based exclusively on the information in the State Board's
11 Database and any corrections the State makes to the database in accordance with the preced-
12 ing paragraph. The State has discretion to use averages or other defaults when gaps in the
13 data remain after its efforts to fill such gaps.

14 78. The identity of Qualifying Class Members and the amounts of their shares
15 shall be determined exclusively from the State Board's Database. The Qualifying Class
16 Members' *pro rata* omitted contributions and gains will be deposited directly into TIAA-
17 CREF Plan accounts for their benefit. Requiring a class member to first submit a claim before
18 he or she would be eligible is thus not necessary and would significantly delay payment to the
19 Qualifying Class Members, would increase expense and complexity, and would not signifi-
20 cantly benefit the Class because of the presumption of accuracy of the State Board's data due
21 to compilation of these data in the course of normal payroll and reporting activity.

22 79. After the \$8.3 million in omitted contributions and gains is transferred to
23 TIAA-CREF, Inc. for deposit to TIAA-CREF Plan accounts for the *pro rata* benefit of Quali-
24
25

1 fying Class Members, there shall be no right to modify the shares or deposits in any way.

2 **Consistency Check and Disbursements to Qualifying Class Members.**

3 80. In determining the Class Members who are Qualifying Class Members and the
4 Qualifying Class Members' *pro rata* shares, the State shall conduct one or more consistency
5 checks to ensure the accuracy of its calculations. The consistency checks shall include, at a
6 minimum, two database programmers independently applying the criteria in this Settlement
7 Agreement to the State Board's Database to ensure the criteria are accurately applied and the
8 result is substantially the same.
9

10 81. After the State ensures the consistency of its calculations concerning the iden-
11 tity of Qualifying Class Members and their *pro rata* shares, the State shall prepare a Report
12 indicating, at a minimum, (1) the name of each Qualifying Class Member, (2) the Qualifying
13 Class Member's *pro rata* omitted contributions and gains; (3) the Qualifying Class Member's
14 Social Security Number; (4) the Qualifying Class Member's last known address; and
15 (5) whether the Qualifying Class Member is currently a member of the TIAA-CREF plan.
16 The State shall then provide TIAA-CREF, Inc. the Report and an electronic fund transfer for
17 \$8.3 million in omitted contributions within 20 days of the effective date of the Legislature's
18 appropriation of the money or 60 days after the Effective Date, whatever event happens later.
19

20 82. Under no circumstances shall the State retain the funds for longer than 20 days
21 after the effective date of the Legislature's appropriation or 60 days after the Effective Date,
22 whatever event occurs later. In the event the Parties are not ready to transfer funds, including
23 the \$8.3 million to TIAA-CREF, Inc. to deposit for the benefit of Qualifying Class Members,
24 the State shall place the money in an interest-bearing account with a depository agreed by the
25 Parties for the sole benefit of Qualifying Class Members. Any interest shall be disbursed *pro*

1 *rata* to each payee, including Qualifying Class Members and Class Counsel.

2 83. Upon receipt of the State's Report and the electronic fund transfer, TIAA-
3 CREF, Inc. will place each Qualifying Class Member's *pro rata* share into accounts in the
4 TIAA-CREF Plan. If a Qualifying Class Member has an existing TIAA-CREF Plan account,
5 TIAA-CREF, Inc. will make an effort to place the Qualifying Class Member's *pro rata* share
6 in the existing TIAA-CREF Plan account in a money market fund. If a Qualifying Class
7 Member does not have an existing TIAA-CREF Plan account, TIAA-CREF, Inc. will place
8 the Qualifying Class Member's *pro rata* share in a TIAA-CREF Plan account under the
9 Qualifying Class Member's name in a money market fund, and the default beneficiary for the
10 Qualifying Class Member's account will be the Qualifying Class Member's estate.
11

12 **Locating Qualifying Class Members.**

13 84. When TIAA-CREF, Inc. deposits each Qualifying Class Member's *pro rata*
14 share in a TIAA-CREF Plan account, TIAA-CREF, Inc. will attempt to contact Qualifying
15 Class Members regarding their accounts by a mailing to the Qualifying Class Members' last
16 known address. For those Qualifying Class Members who are not found, TIAA-CREF, Inc.,
17 will also search Equifax and other databases to attain a potentially accurate address. If a po-
18 tentially accurate address is attained through a search of Equifax and other databases, TIAA-
19 CREF, Inc. will again attempt to contact the Qualifying Class Member regarding his/her ac-
20 count by one or more mailings to the Qualifying Class Members' potentially accurate address.
21 For those Qualifying Class Members who are still not found, TIAA-CREF, Inc. shall send a
22 list of those Qualifying Class Members whom they were unable to contact to the State for ad-
23 ditional efforts to locate the Qualifying Class Members. TIAA-CREF, Inc. shall send the
24 State the list of the Qualifying Class Members they were unable to contact no later than nine
25

1 months after TIAA-CREF receives the State's Report and \$8.3 million electronic fund trans-
2 fer. At the State's expense, and subject to permission of the federal agency, the State shall
3 then try to contact the Qualifying Class Members by sending those Qualifying Class Members
4 a letter informing them of their TIAA-CREF accounts through the procedures set forth in
5 Revenue Procedure 94-22. The State shall commence this effort within 60 days of receiving
6 the Qualifying Class Members' names from TIAA-CREF, Inc.

7
8 85. For those Qualifying Class Members who are still not found, TIAA-CREF,
9 Inc. may make additional efforts to locate missing Qualifying Class Members and the costs of
10 such efforts shall be allocated to and paid by all TIAA-CREF participants as a normal cost of
11 doing business.

12 86. For those Qualifying Class Members who are still not found, TIAA-CREF,
13 Inc. will deem the Qualifying Class Members' account as unclaimed property and turn the
14 property over to the state of the Qualifying Class Member's last known residence according to
15 the Uniform Unclaimed Property Act of that state. That process, however, will not begin for a
16 Qualifying Class Member until he or she attains the maximum age to begin receiving a distri-
17 bution (70½) and there is one year of noncommunication.

18 87. The State Board as administrator of the TIAA-CREF Plan shall ensure that the
19 provisions in this Settlement Agreement are implemented.

20 **IX. COURT'S AUTHORITY AND ENFORCEMENT**

21
22 88. This Settlement Agreement is a product of substantial negotiations and com-
23 promises by the parties, and the Settlement Agreement thus represents a unitary whole and
24 each and every term therein is an integral part of the entire Agreement. Pursuant to Civil Rule
25 23, the Court determines whether the proposed settlement as a whole is fair and reasonable

1 and determines whether to approve or reject the entire Settlement Agreement. The Court is
2 not authorized to modify the terms of the negotiated settlement. The Court retains authority
3 to interpret and enforce this Agreement, to resolve minor ambiguities, to make reasonable
4 modifications to which the parties agree, and to correct minor mistakes and minor technical
5 errors, provided the purposes and intent of the Agreement are fulfilled. Subsequent to the
6 dismissal of claims (paragraph 37), the Court retains authority to compel performance of all
7 requirements of the Agreement that are intended to be carried out after dismissal of claims.
8

9 DATED: May ____, 2002.

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